

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GINO D'AMICO,

Petitioner,

- against -

JAMES T. CONWAY,

Respondent.
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04-CV-2253 (CS)(GAY)

**ORDER ADOPTING
REPORT AND
RECOMMENDATION**

Seibel, J.

Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge George A. Yanthis dated October 29, 2008, (Doc. 25), on Petitioner’s application to file a second petition for a writ of *habeas corpus* limited to the issue of claimed ineffective assistance of appellate counsel. Familiarity with the R&R and all previous proceedings is assumed. Judge Yanthis recommended that the application, which was unopposed, be granted.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific” and “written,” and submitted “[w]ithin 10 days after being served with a copy of the recommended disposition.” Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1)(C).

Where a party submits timely objections to a report and recommendation, the district court reviews the parts of the report and recommendation to which the party objected under a *de novo* standard of review. 28 U.S.C. § 636(b)(1)(C); *see* Fed. R. Civ. P. 72(b)(3) (“The district

judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.”). The district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record. *See White v. Fischer*, No. 04-CV-5358, 2008 WL 4210478, at *1 (S.D.N.Y. Sept. 12, 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); Fed. R. Civ. P. 72 advisory committee’s note (b).

There has been no objection to the R&R, and the Court discerns from the face of the record no clear error in its recommendation, which appears to be justified in light of the facts and the controlling law. Accordingly, the R&R is adopted as the decision of the Court.

Petitioner shall file his petition, limited to the issue of claimed ineffective assistance of appellate counsel, within 30 days of the date of this Order.

The Clerk is respectfully directed to terminate the pending motion. (Doc. 23.)

SO ORDERED.



CATHY SEIBEL, U.S.D.J.

Dated: April 8, 2009
White Plains, New York